

**APPENDIX A**

**RESTRICTIVE COVENANT**

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### RESTRICTIVE COVENANT

The property that is the subject of this Restrictive Covenant is the subject of remedial action under Chapter 70.105D.RCW. The work that will be done to clean up the property and conduct long-term operation and maintenance (hereafter the "Cleanup Action") is described in [Agreed Order or Consent Decree No.] and in attachments to the [Order or Decree] and in documents referenced in the [Order or Decree]. This Restrictive Covenant is required by the Department of Ecology under Ecology's rule WAC 173-340-440 because the Cleanup Action on the Site will result in residual soil and ground water concentrations of Total Petroleum Hydrocarbons (TPH), Polycyclic Aromatic Hydrocarbons (PAHs), Carbazole, Cyanide, Arsenic, Barium, Lead, and Selenium which exceed Method A or Method B residential cleanup levels.

The undersigned, [NAME OF PROPERTY OWNER], is the fee owner of real property (hereafter "the Property") in the [COUNTY], State of Washington, that is subject to this Restrictive Covenant. The Property is legally described in Attachment A of this Restrictive Covenant and incorporated herein by reference.

[NAME OF PROPERTY OWNER] makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1. No groundwater may be taken for domestic, commercial, industrial, or any other purposes from the Property unless the groundwater removal is part of monitoring activities associated with an Ecology approved compliance monitoring plan. No production well will be installed within the Property.

Section 2. Any activity on the Property that may result in the release or exposure to the environment of the contaminated soil or ground water that was contained as part of the Cleanup Action, or create a new exposure pathway, is prohibited without prior written approval by the Department of Ecology.

- a. Excavation of contaminated soil is prohibited, unless approved by Ecology, for the following exceptions:

Excavation performed to repair, maintain, service or remove underground utility components, conduits, installations or channels.

Drilling, driving, or boring to install pilings for allowable and approved constructions.

- b. All contaminated soils and or/ground water to be generated from approved excavation activities must be treated or disposed of according to all state, federal, and local regulations.
- c. Workers conducting approved excavations must use appropriate personal protective equipment as required by the Occupational Safety and Health Act (OSHA) and the Washington Industrial Safety and Health Act (WISHA).

Section 3. The Owner of the Property shall adhere to the requirements of the Consent Decree and Cleanup Action Plan (CAP) issued by the Washington State Department of Ecology for the Property. Any activity on the Property that may interfere with the integrity of the Cleanup Action and continued protection of human health and the environment is prohibited. Examples of activities that are prohibited include:

- a. Activities that would disturb the cap or cover of the contaminated soils, like drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike, or similar item; bulldozing or earthwork.
- b. Activities that would disturb or overload the stormwater system.
- c. Excessive application of water for purposes such as irrigation, washing/rinse down pad, etc.
- d. Use or storage of chemicals (e.g., solvents, detergents or other surfactants, etc.) that would result in the mobilization of contaminants in soils or ground water contained on Site.

This restriction recognizes that maintenance or construction activities at the Property conducted in accordance with the CAP requirements shall not constitute activities that interfere with the Cleanup Action.

Section 4. No activity is allowed that may change the hydrogeologic conditions and that would cause the movement of contaminated ground water to areas outside the impacted soil area.

Section 5. Any construction over the Site (i. e., buildings and concrete surfaces, pavement, etc.) must address and mitigate, as necessary, potential vapor build-up due to the contamination left on Site.

Section 6. The Owner of the Property must provide access and allow authorized persons to conduct ground water monitoring and cover monitoring as required in the Cleanup Action.

Section 7. The Owner of the Property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Cleanup Action on the Property.

Section 8. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions herein on the use of the Property.

Section 9. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 10. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Cleanup Action; to take samples, to inspect Cleanup Actions conducted at the Property, and to inspect records that are related to the Cleanup Action.

Section 11. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology or a successor agency, after public notice and comment, consents in writing.

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[NAME OF PROPERTY OWNER]

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[DATE SIGNED]

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